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May 9, 2022

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

In Re: Annual Review of Base Rates for Fuel Costs for Dominion Energy South Carolina, Incorporated (For Potential Increase of Decrease in Fuel Adjustment)
Docket No. 2022-2-E

Dear Ms. Boyd:

On behalf of the South Carolina Coastal Conservation League and Southern Alliance for Clean Energy, please find a *Partial Petition for Reconsidertion* attached for electronic filing in the above-referenced docket. Please contact me if you have any questions regarding this filing.

Sincerely,

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STATE OF SOUTH CAROLINA

BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 2022-2-E

In the Matter of:	)	
	)	**SOUTHERN ALLIANCE FOR CLEAN ENERGY AND SOUTH CAROLINA COASTAL CONSERVATION LEAGUE'S PARTIAL PETITION FOR RECONSIDERATION AND/OR REHEARING**
Annual Review of Base Rates for Fuel Costs for Dominion Energy South Carolina, Incorporated (For Potential Increase or Decrease in Fuel Adjustment)	)	

INTRODUCTION

The South Carolina Coastal Conservation League ("CCL") and Southern Alliance for Clean Energy ("SACE") respectfully petition the Public Service Commission of South Carolina ("Commission") for partial reconsideration or rehearing of Order No. 2022-290 (the "Order") approving Dominion Energy South Carolina's ("DESC" or the "Company") adjustment to its fuel rider in the above-captioned matter. Specifically, CCL/SACE request rehearing and/or reconsideration regarding the "value of solar," as calculated by DESC and approved by the Order. In approving several key components within the value of solar calculation—notably Avoided Generation Capacity, Energy Lines Losses, Avoided Transmission and Distribution Capacity, and Fuel Hedge—the Order arbitrarily and inconsistently applies the standards in Order No. 2021-569 (the "Generic NEM Order"), ignores material issues of fact, and fails to justify its findings with substantial and reliable evidence. The value of solar has an inverse relationship with the fuel costs passed through

to customers, meaning that an increase in the value of solar, consistent with CCL/SACE's recommendations, would decrease the fuel rider and lower costs for all customers.

BACKGROUND

This proceeding arises from the Commission's annual review of DESC's fuel purchasing practices and policies, conducted pursuant to S.C. Code Ann. § 58-27-865. S.C. Code Ann. § 58-27-865(F) directs the Commission to "disallow recovery of any fuel costs that it finds without just cause to be the result of failure of the utility to make every reasonable effort to minimize fuel costs or any decision of the utility resulting in unreasonable fuel costs."

In addition to fuel costs, S.C. Code Ann. § 58-39-140 (2015) permits recovery of the incremental and avoided costs incurred by the Company to implement the Distributed Energy Resource ("DER") program, referred to as the "DER Incentive," as determined by the Commission in annual fuel proceedings. Through the DER Incentive, the Company may recover lost revenue associated with customer-generators who applied prior to June 1, 2021, referred to as the DER Net Energy Metering ("NEM") Incentive. *See* S.C. Code Ann. § 58-40-20(I),

To calculate the NEM portion of the DER Incentive, as established in Order No. 2015-194, utilities must determine the difference between the retail rate (the rate at which these customer-generators are compensated under the tariff) and the value of the NEM generation that the customer-generators provide to the DESC system. The "NEM methodology" originally set out in Order No. 2015-194 quantifies the net benefits delivered by DERs (the "value of solar") using a "value stack" of costs that the utility will avoid (or,

in a few instances, incur) due to the distributed solar on its system.[1] When the value of solar falls below the retail rate, utilities may recover the difference in under recovered revenue from all customers (subject to certain statutory caps). Thus, there is an *inverse* relationship between the net benefits of DERs and the DER NEM Incentive the utility collects from ratepayers. **As the value of solar *increases*, the DER NEM Incentive, the fuel rider, and customer bills all *decrease*.**

In 2019, Act 62 established additional requirements regarding the costs and benefits of NEM in furtherance of the General Assembly's stated intent to "build upon the successful deployment of solar generating capacity through Act 236 of 2014," S.C. Code Ann. § 58-40-20(A) and "ensure that the revenue recovery, cost allocation, and rate design of utilities that [the Commission] regulates are just and reasonable and *properly reflect* changes in the industry as a whole, *the benefits of customer renewable energy*, energy efficiency, and demand response," S.C. Code Ann. § 58-41-05 (2019) (emphasis added). Act 62 required the Commission to open a generic docket by January 1, 2020, to "investigate and determine the costs and benefits of the current net energy metering program" and "establish a methodology for calculating the value of the energy produced by customer-generators." S.C. Code Ann. § 58-40-20(C)(1)-(2).[2] As required, the

[1] The complete list of components includes Avoided Energy; Energy Losses/Line Losses; Avoided Generation Capacity; Ancillary Services; Transmission and Distribution Capacity; -Avoided Criteria Pollutants; Avoided Carbon Dioxide (CO_2) Emission Costs; Fuel Hedge; Utility Integration; Utility Administration Costs; and Environmental Costs. *See* Order No. 2021-569, Ex. 1.

[2] In evaluating the costs and benefits of the NEM program, the Commission was required to consider:

> (1) the aggregate impact of customer-generators on the electrical utility's long-run marginal costs of generation, distribution, and transmission;
> (2) the cost of service implications of customer-generators on other customers within the same class, including an evaluation of whether customer-generators provide an adequate rate of return to the electrical utility compared to the otherwise applicable rate class when, for analytical purposes only, examined as a separate class within a cost of service study;

Commission opened the Generic NEM docket, Docket No. 2019-182-E, and after hearing extensive testimony, issued Order No. 2021-569 (the "Generic NEM" Order) on August 19, 2021.

The Generic NEM Order endorsed the continued use of the 2015 methodology with key modifications. Order No. 2021-569 at 11-12. First, the Commission clarified its expectations for the value of solar calculation, stating its requirement that "electrical utilities [] use *best efforts* and *best practices* to *populate* each category or value in the Order No. 2015-194 methodology, as modified here, in all future proceedings where this analytical framework is utilized." Order No. 2021-569 at 34 (emphasis added). Further, should a utility continue to use a zero value in the value stack, the "Commission adopt[ed] a standard [] that electrical utilities in utilizing the Order No. 2015-14 valuation methodology *bear the burden of showing why a zero value is justified* and *why it is not practical or feasible to provide the analysis required*." *Id.* (emphasis added). In addition, the Commission required solar benefits to be evaluated over a twenty-year expected useful life and articulated specific methodological requirements for components in the value stack. Order No. 2021-569 at 9, 11-14.

The Commission directed utilities to "use the updated methodologies in determining the [DER] component of their overall fuel factor in annual fuel proceedings [] for purposes of determining the NEM DER Incentive cost recovery associated with existing

> (3) the value of distributed energy resource generation according to the methodology approved by the commission in Commission Order No. 2015-194;
> (4) the direct and indirect economic impact of the net energy metering program to the State; and
> (5) any other information the commission deems relevant.

S.C. Code Ann. § 58-40-20(A).

customer generators." Order No. 2021-569 at 54. This is DESC's first fuel proceeding since issuance of that order. Accordingly, DESC Witness James W. Neely presented the Company's proposed value of solar in his direct testimony, as well as the calculation of the individual components, and asserted that those values met the requirements of Order No. 2015-194 as modified by the Generic NEM Order. In the Current Period, DESC used a zero value for Avoided Generation Capacity, Ancillary Services, Transmission & Distribution ("T&D") Capacity, Avoided CO_2 Emission Cost, Fuel Hedge, and Utility Administration Costs—the same number of components (six) as was used in the 2021 fuel cost proceeding prior to the publication of Order No. 2021-569. *Compare* Tr. at 145.7 (Table 1) *with* Tr. at 145.8 (Table 2). For the long-term value, the Company proposed to populate just one additional zero value when compared to last year's long-term calculation. *Id.; see also* Tr. at 157:2-19.

CCL/SACE Witness R. Thomas Beach presented testimony in response to Witness Neely, critiquing DESC's proposed values for a number of components, including energy losses/line loss, avoided generation capacity costs, avoided transmission and distribution ("T&D"), and fuel hedge. Overall, he found that DESC had significantly understated the value of solar and proposed alternative approaches and recalculated values for several components to more fully account for the value of solar in DESC's calculation of the DER NEM Incentive and comply with the updated methodological requirements in the Generic NEM Order. Tr. at 302.4–302.6, 302.9. Witness Beach's testimony highlighted the inverse relationship between the net benefits of solar and the DER NEM Incentive the utility collects from ratepayers, noting that it was critically important to ensure that the benefits of DERs are accurately and fully accounted for to ensure ratepayers are not overpaying or

subsidizing the utility on the basis of incorrect solar valuation. Tr. at 302.8. On the stand, DESC Witness Rooks confirmed that when the value of solar increases, it has a downward impact on the DER NEM incentive the utility collects. Tr. at 270:25-271:3.

The testimony of Witness Neely, Witness Rooks, and Witness Beach was entered into the record at a hearing before the Commission on April 7 and 8, 2022, with the Honorable Justin T. Williams presiding as Chairman.

STANDARD OF REVIEW/APPLICABLE LAW

A. Law Governing Petitions for Rehearing and/or Reconsideration

Pursuant to S.C. Code Ann. Section 58-27-2150, a party may petition the Commission for reconsideration or rehearing in respect to any matter determined in the proceeding. "The purpose of a petition for rehearing and/or reconsideration is to allow the Commission the discretion to rehear and/or reexamine the merits of issued orders pursuant to legal or factual questions raised about those orders by parties in interest, prior to a possible appeal." Order No. 2013-5 at 1-2 (Feb. 14, 2013). S.C. Code Ann. Regs. Section 103-825(A) requires a petition for rehearing and/or reconsideration to "set forth clearly and concisely: (a) The factual and legal issues forming the basis for the petition; (b) The alleged error or errors in the Commission order; [and] (c) The statutory provision or other authority upon which the petition is based."

B. Legal Requirements for Commission Decisions

Though South Carolina law affords the Commission a deferential standard of review, it requires Commission decisions to meet certain minimum standards to ensure those decisions are grounded in well-reasoned and fact-based judgment. *In re Blue Granite Water Co*., 434 S.C. 180, 187–88 (2021). To start, S.C. Code Ann. Section 58-27-2100

requires Commission decisions to be presented in a manner that facilitates review, or "in sufficient detail to enable the court on review to determine the controverted questions presented by the proceeding and whether proper weight was given to the evidence." Further, Commission decisions will be reversed or remanded if the decision is "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or [] arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." S.C. Code Ann. § 1-23-380(5)(e)-(f).

1. Commission decisions may not be arbitrary.

A decision by the Commission is "arbitrary" if it is "without a rational basis, is based...not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." *Daufuskie Island Util. Co., Inc. v. S.C. Off. of Regul. Staff*, 427 S.C. 458, 464 (2019). To avoid arbitrary decision-making, "the commission should evaluate the evidence in accordance with objective and consistent standards." *Id.* at 463. For example, in *Daufuskie,* the Court concluded the Commission's decision was arbitrary after hearing evidence that the appellant was subject to a high retaliatory review on remand by the Office of Regulatory Staff ("ORS") and Commission. *Id.* at 463-64. The Commission's review of evidence was also contrasted in *Daufuskie* by a much less searching review in an initial hearing, which highlighted that a new, arbitrary standard was being applied in the order being appealed. *Id.* at 462. It is self-evident that a decision based on animus or desired outcome cannot be based on "objective and consistent standards."

One way to measure the objectivity and consistency of Commission decisions is to ensure consistency with previous orders. *See Illinois Council of Police v. Illinois Lab. Rels.*

Bd., 936 N.E.2d 1212, 1218 (Ill. App. 2010) ("[S]udden unexplained changes in an agency's policy or practice "have often been considered arbitrary." (internal citations and quotation marks omitted)). That said, and "while prior decisions are entitled to great weight,[3] so long as the administrative body rationally justifies its change of position, it may depart from prior rule or practice" and "re-examine and alter its previous findings as to reasonableness when conditions warrant.'" *Duke Energy Carolinas, LLC v. S.C. Off. of Regul. Staff*, 434 S.C. 392, 405-06 (2021), *reh'g denied* (Feb. 1, 2022) (quoting *S. Bell Tel. & Tel. Co. v. Pub. Serv. Comm'n*, 270 S.C. 590, 610 (1978) (Ness, J., concurring in part and dissenting in part) and 73A C.J.S. *Public Administrative Law and Procedure* § 352 (June 2021 Update)). This standard is consistent with the fundamental principle that administrative decisions contradicting previous positions without justification are generally subject to less deference by reviewing courts. *See Huntington Hosp. v. Thompson*, 319 F.3d 74, 79 (2d Cir. 2003) ("While an agency is not locked into the first interpretation of a statute it embraces, it cannot simply adopt inconsistent positions without presenting 'some reasoned analysis.'"); *Bass v. Whalen's Furniture, Inc*., 567 S.W.3d 771, 777 (Tex. App. 2018) ("[B]oth state and federal courts require that an agency explain its reasoning when it appears to have departed from its earlier administrative policy or to be inconsistent in its determinations."); *Kansas Indus. Consumers Grp., Inc. v. State Corp. Comm'n of State of Kan.*, 138 P.3d 338, 346 (Kan. App. 2006) ("[T]he process by which an administrative agency reaches its decision must be logical and rational, especially if the agency is deviating from its prior standards.")

2. Commission decisions must be based on substantial evidence.

[3] After all, "[o]rders issued under the powers and authority vested in the PSC have the force and effect of law," *see S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co*., 308 S.C. 216, 219 (1992).

"The PSC is generally given a wide range of discretion in utility rate cases, however, that discretion cannot be exercised without a factual basis to support the commission's decision." *Seabrook Island Prop. Owners Ass'n v. S.C. Pub. Serv. Comm'n*, 303 S.C. 493, 496 (1991); *Parker v. S.C. Pub. Serv. Comm'n*, 280 S.C. 310, 313 (1984) ("Discretion cannot be exercised without a factual basis."). As such, the Commission must "base its decision *on reliable, probative, and substantial evidence on the whole record*." *Porter v. S.C. Public Service Comm'n*, 333 S.C. 12, 21 (1998) (emphasis added). "Substantial evidence is not a mere scintilla; rather, it is evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion as the agency." *Friends of Earth v. Pub. Serv. Comm'n of S.C.*, 387 S.C. 360, 366 (2010).

To ensure that reviewing courts may assess the factual basis of Commission, commission orders must "fully document [] findings of fact" and present "findings which are sufficiently detailed to enable th[e] Court to determine whether the findings are supported by the evidence and whether the law has been applied properly to those findings." *Porter*, 333 S.C. at 21. For example, in *Hamm v. S.C. Pub. Serv. Comm'n,* 298 S.C. 309, 312 (1989), the Court remanded a number of contested issues to the Commission because the order was so lacking in detail that it "preclude[d] a decision by th[e] Court on whether substantial evidence on the whole record supports the PSC's ultimate conclusions."

In other words, "[e]xpert status [] does not somehow diminish the [Commission]'s duty to support its conclusions with factual findings; indeed, that status heightens the duty to make the explicit findings of fact which allow meaningful appellate review of these complex issues." *Seabrook*, 303 S.C. at 497. Along these lines, the Commission must offer

some explanation for its conclusions. "Implicit findings of fact are not sufficient. Where material facts are in dispute, the administrative body must make specific, express findings of fact." *Able Communications v. S.C. Public Service Com'n*, 290 S.C. 409, 411 (1986). "[R]ecital of conflicting testimony followed by a general conclusion is patently insufficient to enable a reviewing court to address the issues." *Porter*, 333 S.C. at 21.

ARGUMENT

The Order relies on several legal and factual errors in approving DESC's proposed value of solar and the corresponding NEM Methodology employed by the Company in this proceeding. Specifically:

- The Order incorrectly suggests that Witness Beach's proposed value of solar would increase rates, when the opposite is true, as was unequivocally established by DESC Witness Rook's hearing testimony.

- The Order's approval of DESC's avoided capacity value and supporting methodology is based on an arbitrary and erroneous application of the standards in the Commission's recently issued Generic NEM Order and does not address the critical issue of DESC's near-term capacity need.

- Likewise, the Order's approval of DESC's line loss component ignores the applicable standard from the Generic NEM Order and does not offer any evidence supporting adoption of DESC's proposed value.

- The Order's approval of DESC avoided T&D component of zero for the Current Period is not supported by substantial evidence in the record.

- The Order's determination on fuel hedge ignores the controlling definition of fuel hedge, as set out in the NEM methodology.

Should the Commission grant this petition for reconsideration, CCL/SACE request that it adopt some or all of the alternative values proposed in Witness Beach's testimony, including for Avoided Generation Capacity, Energy Losses/Line Losses, Avoided T&D Capacity, and Fuel Hedge. In the alternative, we request that the Commission clarify its

reasoning and clearly identify the evidence on which it relied, as specified in greater detail below.

A. The Order incorrectly suggests that Witness Beach's proposed value of solar would increase rates, when the opposite is true, as was unequivocally established by DESC Witness Rook's hearing testimony.

The Order appears to rely on an incorrect statement by DESC Witness Neely regarding the overall impact of value of the solar on customer bills. Order No. 2022-290 at 37. Specifically, the Order states that "[i]n summarizing the result of using Beach's calculations, DESC Witness Neely testified 'regular customers' bills would go up if we use [Witness Beach's] method," but neglects to reference the subsequent testimony of DESC Witness Allen Rooks which explicitly addressed and corrected Witness Neely's incorrect assertion. DESC Witness Rooks explained that the *opposite* of Witness Neely's assertion is true, and in fact, "[i]f the value of solar [] is set lower, then the incentive would be higher and customers would pay more in incentive," whereas "[i]f it's set higher, the customers would pay less in incentive." Tr. at 270:25–271:3. As a result, **an increase to the value of solar, as Witness Beach recommended based on his calculations, would decrease the NEM incentive and reduce customers' bills**. Tr. at 269:6-25. Notably, Witness Beach's recommendation to more accurately value solar according to the standards set out in the Generic NEM Order was the only recommendation by any party in this proceeding that would reduce the impact of the fuel rider on customers' bills, in a year when there was a significant jump in the rider due to spikes in gas prices.

Witness Neely's inaccurate assertion related to the value of solar as a whole, rather than any specific component, so it is unclear why the Order includes it in sub-section addressing the line losses component. However, to the extent the Commission relied on

this assertion in any way to justify adopting Witness Neely's proposed calculation for the line losses component or the DESC's aggregate value of solar, that conclusion is fundamentally flawed and not supported by the record. DESC's own witness corrected this incorrect statement at the hearing. *See* Tr. at 270:25–271:3. Having reviewed the whole record—including the testimony of Witness Rooks and Witness Beach—no reasonable mind could reach the conclusion that Witness Neely's false assertion supported DESC's value of solar.

Commission decisions cannot be based on rationales that are "simply incorrect," *Porter,* 333 S.C. at 27, "illusory" according to "uncontroverted" testimony, or that ignore relevant data and are, as a result, "seriously misleading," *Heater of Seabrook, Inc. v. Pub. Serv. Comm'n of S.C.*, 324 S.C. 56, 61, 63 (1996). The Commission has used reconsideration in the past to correct inaccurate assertions in initial orders. *See* Order No. 2020-244 at 12-13 (vacating part of initial order on reconsideration part to correct misstatement in initial order that the "parties determined that responses to discovery demands had been sufficient" when in fact significant ongoing transparency concerns had been identified throughout the proceeding). Here, Witness Neely's statement is all of the above—"incorrect," "illusory," and "seriously misleading"—and must therefore be corrected, or provided additional context on reconsideration. Of particular concern, were the Order to stand without correction, the selective quotation of incorrect testimony might mislead or confuse future parties as to the relationship between the value of solar and customer bill impacts.

Accordingly, CCL/SACE request that the Commission clarify on reconsideration that the block quotation on page 37 is incorrect and was subsequently corrected on the

record by DESC Witness Rooks. Further, we request that the Commission confirm that Witness Neely's statement did not inform the Order's approval of DESC's aggregate value of solar, or any individual component, and include in the final order the factual correction as to the impact of the value of solar on the DER NEM Incentive and customer bills as explained by Witness Rooks at the hearing.

B. The Order's approval of DESC's avoided capacity value and supporting methodology is based on an arbitrary and erroneous application of the standards in the Commission's recently issued Generic NEM Order and does not address the critical issue of DESC's near-term capacity need.

The Order approves DESC's calculation for the avoided generation capacity component in its entirety, but applies the incorrect standard from the Generic NEM Order and does not offer any conclusion or rationale with respect to the avoided capacity value over the Current Period.

The Order concludes that "Witness Neely's avoided capacity calculations are consistent with the requirement of Order No. 2021-569 to use an estimate of the hourly usage profile based on historic usage profiles." Order No. 2022-290 at 31. Witness Neely attempted to justify why DESC's methodology—specifically the approach used to derive a solar capacity contribution of 3.423%—complied with Order No. 2021-569 by quoting a portion of that Order finding that:

> [I]t is reasonable to estimate the hourly usage profile of a customer-generator using historic usage profiles and estimating the net hourly usage profile of these customers by applying the aggregate generation profile for that corresponding period recorded from all customer-generators with production meters owned and controlled by the electrical utility.

Tr. at 145.9:20-145.10:3. However, the cited language from a part of Generic NEM Order that does *not* apply to the NEM avoided capacity component.

In fact, this language from the Generic NEM Order applied only to an appropriate methodology for conducting the *cost of service analysis* required by S.C. Code Ann. § 58-40-20(D)(2). *See* Order No. 2021-569 at 10-11.[4] The Energy Freedom Act required the Commission to open a generic proceeding to *both* update the value of solar methodology as it applied to existing customer-generators (the NEM methodology), *and* evaluate the appropriate methodology for considering the cost and benefits of Solar Choice tariffs—the next iteration of net metering in South Carolina. S.C. Code Ann. § 58-40-20(C). In contrast to the recovery permitted for existing solar customers (those who signed up prior to June 1, 2021), which is evaluated under the NEM Methodology set forth in Order No. 2015-194, the Energy Freedom Act also prohibited utilities from recovering lost revenues for Solar Choice customers. *See* S.C. Code Ann. § 58-40-20(I). Thus, the language from Order No. 2021-569 referencing the cost of service analysis and methodology was relevant only to Solar Choice customers, as a way to measure the impacts of those customer-generators on other members of their class, but does not actually have any bearing on the NEM Methodology, which only applies to pre-Solar Choice customers.

[4] The factual finding states in its entirety:

> Evaluating the theoretical customer-generator classes under the cost of service analytical factors requires load data, or a method consistent with an electrical utility's current load research, on a statistically significant sample of customer-generators. Where this is not currently possible, it is reasonable to estimate the hourly usage profile of a customer-generators use historic usage profiles and estimating the net hourly usages profile of these customers by applying the aggregate generation profile for that corresponding period recorded from all customer-generators with production meters owned and controlled by the electrical utility. The load of customer-generators should be evaluated within the cost of service analysis on the basis of net hourly consumption from the electric grid.

Order No. 2021-569 at 10-11. A related discussion from the Generic NEM Order, titled "Data Requirements for Cost of Service Analysis" also states "[t]o estimate customer-generator's a gross load, it is reasonable to look at customer's historic hourly usage data, where available, to reconstitute the expected gross load for the counterfactual analysis [cost of service analysis]." Order No. 2021-569 at 30.

The Generic NEM Order has an entirely separate section—with the heading "Value of Distributed Energy Resources"—addressing updates to the NEM Methodology, and the appropriate methodology for each component is set out under the relevant subheading. For avoided capacity, the Generic NEM Order explicitly "adopts Witness Beach's recommendation that forecasts of capacity costs takes into consideration the hours in which utility loads are likely to peak and when generation is most needed." Order No. 2021-569 at 38. That approach is based on a Peak Capacity Allocation Factor analysis, which identifies the extent to which hourly load exceeds 90% of the annual peak hour's load and then applies a solar profile to the peak load distribution to determine the percent capacity contribution. Order No. 2021-569 at 37. While DESC Witness Neely claimed, with no explanation, that Witness Beach used a different method in this docket, Tr. at 208:2-13, in actuality, **Witness Beach applied the same approach that was explicitly adopted in the Generic NEM proceeding to calculate avoided capacity**, except that he applied it to a longer period of data—specifically fifteen years, Tr. at 302.14:17-20.

Nevertheless, the Order states "Witness Beach has not presented evidence or analysis to warrant this Commission change its methodology or for the Commission to find that DESC did not comply with the established methodology." Order No. 2022-290 at 31. In fact, by approving Witness Neely's approach and rejecting Beach's approach, **the Order—*not* Witness Beach—is changing the established methodology** without providing any justification for departing from its previous standard. As noted previously, the Commission may change its policy but must provide some rational basis for doing so. *See Duke Energy Carolinas*, 434 S.C. at 405–06. The Order gives no basis for changing the methodology or applying an inapplicable standard from the Generic NEM Order. In

addition, it is apparent from a plain reading of the Generic NEM Order that Witness Neely cited the wrong methodology and thus could not have complied with the "established methodology."

The Order's avoided capacity section also neglects to make any specific findings of fact regarding whether DESC has a near-term capacity need, a second, key, aspect of the avoided capacity component that was disputed in this proceeding. On this issue, Witness Beach proposed an avoided capacity value for the Current Period to appropriately account for DESC's near-term capacity need based on in the Company's plans in its 2021 IRP Update to replace aging units with new combustion turbines ("CTs") as early as 2023; these plans indicate a capacity need regardless of whether load growth or aging units created the need. Tr. at 302.19:1-12. In contrast, DESC asserted its first capacity need was not until 2028 to justify assigning a zero value to the avoided capacity component for the Current Period, Tr. at 153.5:11-13, despite acknowledging at the hearing that the new units would provide capacity in addition to other capabilities, Tr. at 198:14-19. The Order recites this competing testimony but does not offer a conclusion or finding of fact to resolve the issue. *See* Order No. 2022-290 at 28-31. Even if the wholesale adoption of DESC's value of solar was intended to signal agreement with the Company, "[i]mplicit findings of fact are not sufficient" and "[w]here material facts are in dispute, the administrative body must make specific, express findings of fact." *Able Communications*, 290 S.C. at 411; *Hamm*, 298 S.C. at 312 (remanding order to Commission where "[a]t best, the Order may be read as a tacit approval"). The absence of any rationale or finding on this topic leaves parties in the dark and would prevent meaningful appellate review. *See Porter*, 333 S.C. at 21

(finding commission order "deficient" because it "made no findings of fact or offered any explanation of its conclusion" and "simply recites conflicting testimony").

Accordingly, CCL/SACE request that the Commission reconsider its findings and conclusions relating to the avoided capacity component. Specifically, we request that the Commission adopt the avoided capacity value as calculated by Witness Beach, which he demonstrates in testimony complies with the established methodology in the Generic NEM Order, and which properly accounts for DESC's near-term capacity need. In the alternative, we request that the Commission provide a basis for changing the avoided capacity methodology as previously established in the Generic NEM ORder, as well as a finding and conclusion explaining why DES8C's plans to replace units that provide capacity, in addition to other capabilities, as early as 2023, does not conclusively establish a near-term capacity need.

C. Likewise, the Order's approval of DESC's line losses component ignores the applicable standard from the Generic NEM Order and does not offer any evidence supporting adoption of DESC's proposed value.

Similarly, the Order's section on the line losses component ignores the applicable standard from the Commission's recently issued Order No. 2021-569 and does not include any discussion or findings relating to the relevant evidence. In approving DESC's proposed value for its line losses component, the Order states that "DESC does not assign a zero value, and there is no evidence in the record to suggest that DESC is not using best practices in its calculation of this component." Order No. 2022-290 at 38. The Generic NEM Order does indeed direct utilities to use "best practices" to populate all component values, but it also requires, specific to the line losses component, "that electrical utilities determine the marginal line losses associated with customer-generator facilities." Order

No. 2021-569 at 46. In other words, for the line losses component, the Generic NEM Order specified a particular "best practices" method that the Order here appears to either ignore or overlook.

Further, the Order's rationale offered in support of approving this value, that there is "no evidence in the record to suggest that DESC is not using best practices in its calculation of this component," is simply not true. *See* Order No. 2022-290 at 38. Witness Beach presented evidence showing that DESC did not comply with the applicable directive, resulting in underestimating the component's value (and therefore increasing the incentive amount recovered from customers): DESC assumed that *average* transmission losses are representative of marginal transmission losses, when generally marginal losses are at least 50% *greater* than average losses.[5] Tr. at 302.32:17–302.33:1. The Order contains no discussion of this key evidence—which has a direct bearing on DESC's compliance with the standard in the Generic NEM Order—and only recites evidence, including Witness Neely's inaccurate assertion discussed above, that has no bearing on the reasonableness of DESC's line losses value. The Order briefly notes that Witness Beach acknowledged DESC was developing a study plan to inform the line losses component; while Witness Beach did acknowledge that plan, his observation has no bearing on the fact that the value DESC used in this proceeding does not comply with the Generic NEM Order and underestimates the component.[6] In short, the Order's approval of the line losses component departs from the recently-approved Generic NEM Order without justification and does not appear to be based on the relevant evidence submitted in this proceeding. *See Porter*, 333

[5] For distribution, the Company did appear to assume that marginal distribution losses are two times average losses. Tr. at 302.33:1-2.

[6] Moreover, the fact that DESC partially complied with the Order No. 2021-569 for distribution suggests there is no reason for them to delay compliance with the standard in the Generic NEM Order.

S.C. at 21 ("[The Commission] must fully document its findings of fact and base its decision on reliable, probative, and substantial evidence on the whole record.").

Accordingly, CCL/SACE request that the Commission adopt the line losses value proposed by Witness Beach in recognition of the fact that this is the only value that complies with the applicable standard in the Generic Order. In the alternative, we request that the Commission provide a rational explanation as to why it is acceptable for DESC to use average line losses to calculate this component in direct contradiction of the Generic NEM Order.

D. The Order's approval of DESC avoided T&D component of zero for the Current Period is not supported by substantial evidence in the record.

Regarding the avoided T&D component for the Current Period, the Order states "DESC provided testimony that it used best efforts and practices in calculating a zero value for this component. The Commission finds that DESC used best efforts to make this determination and has provided sufficient justification for the zero value in its discussion of data development in its T&D plan." However, this conclusion is not supported by substantial evidence as no reasonable mind could reach this conclusion having reviewed the record. *See Heater of Seabrook,* 324 S.C. at 63.

To begin, in direct testimony, DESC Witness Neely provided one conclusory statement that the value was zero because the T&D value in the current period was zero.[7] When asked by counsel at the hearing whether DESC reviewed or considered employing a non-zero value for avoided T&D over the review period, Witness Neely stated the Company used the same method it was "accustomed to" and had used "for a number of

[7] The exact language is as follows: "For the current period, DESC's NEM distributed resources do not avoid transmission or distribution capacity, and, therefore, the value of this component is zero." Neely Direct at 11, ll. 4-6.

years." Tr. at 173:12-19. Despite admitting that the Company had made *no* changes to its prior method, Witness Neely nevertheless claimed this method satisfied the Generic NEM Order. *Id.* Witness Neely was also "not aware of the methods used by other utilities" to calculate this benefit. Tr. at 176:21–177:9. A conclusory statement for a zero value and an admission that the Company employed the same approach as always and had not explored alternative practices to populate this value cannot possibly amount to "best efforts and practices."

It is true that "DESC provided testimony that it used best efforts and practices in calculating a zero value for this component" and Witness Neely "believed [DESC had] done the best job at calculating the avoided T&D costs on [its] system." Tr. 177:10-17. But mere witness opinions without factual support fall short of the substantial evidence requirement. *See Parker v. S.C. Pub. Serv. Comm'n*, 281 S.C. 215, 217 (1984) (finding that witnesses' "opinions that a 4% depreciation rate was reasonable for rate making purposes, [were] of no probative value in view of the fact that there is no evidentiary showing of the facts upon which the opinion is predicated").

The only arguable justification that DESC offered for this zero value is that there has been no load growth in the Current Period and so there is no avoided T&D benefit, and indeed the Commission rejects Witness Beach's calculation on this basis—because he does not limit his analysis only to T&D costs involving load growth. *See* Order No. 2022-290 at 31, 33. However, the record does not support this narrow "load growth" approach as a "best practice" or as a comprehensive approach to measure avoided T&D. Witness Neely provided no justification for his assertion that a mere one year of load data was sufficient to calculate avoided T&D costs, could not cite any other utility or source that used or

supported such an approach, and indeed, Witness Neely admitted that "even over a year where there isn't load growth, DERs are still working to avoid future costs to the company." (Tr. at 167:18-23, 169:16-21, 176:21–177:18.) Witness Neely also acknowledged that there were numerous reasons there may not be load growth over a period as short as a year, most of which have no bearing on the overall T&D costs incurred by a utility over time.[8] In other words, tying avoided T&D costs to load growth alone—aside from being a potentially arbitrary standard which does not have any support in the Generic NEM Order—does not actually justify a zero value for the Current Period.

In contrast, Witness Beach proposed an alternative T&D value for the current period using the National Economic Research Associates ("NERA") regression method, a long-recognized approach used by other U.S. utilities to determine avoided T&D capacity costs. (Tr. at 302.22:4–7.) The NERA approach evaluates the long-term correlation between peak demand and load growth on the DESC system and the utility's investments in T&D, reflecting the fact that DERs will avoid capacity-related T&D costs to the extent they can reduce DESC's peak demand. (Tr. at 98:16-22, 302.22:7–302.24:10.)

CCL/SACE recognize that Generic NEM Order provided utilities with flexibility to "employ a methodology that reflects the current state of available data," but the Commission also found that "avoided [T&D] may have a non-zero value and electrical utilities should make greater effort to quantify a value using a methodology that accounts for the relative availability and granularity of data." Order No. 2021-569 at 44. DESC could have used this "flexibility" to review available methods and identify an approach—such as

[8] Specifically, Witness Neely also agreed that load could change within a year and even stated that "if the DER reduced load, then the T&D could be reduced." Tr. 168:15 – 169:16, 170:17-18.

the methodology Witness Beach recommends—to estimate avoided T&D using the currently available data for the Company.[9] As noted earlier, it is critical to quantify the value of avoided T&D—in addition to the other components—to ensure DESC is not *overcharging* customers through the DER NEM incentive. However, DESC appears to have made no effort, let alone "best efforts," to comply with the directive from Generic NEM Order and its proposed zero value for the Current Period is without support in the record. As such, there is no factual basis for the Commission to approve DESC's zero value. *See Hamm v. S.C. Pub. Serv. Comm'n*, 295 S.C. 429, 431 (1988) (concluding that, because the utility had not provided factual support for an issue, the Commission and the circuit court also did not provide factual support for approval of that issue).

Accordingly, CCL/SACE urge the Commission to adopt Witness Beach's alternative value for the current period, which was calculated according to best practice and in a manner that accounts for the full T&D benefits of DERs. In the alternative, we request that the Commission provide additional justification as to the evidence in the record that supports a zero value for avoided T&D the Current Period.

E. The Order's determination on fuel hedge ignores controlling definition of fuel hedge, as set out in the NEM methodology.

In approving DESC's zero value for the fuel hedge component, the Order states that "DESC does not financially hedge its fuel costs and, therefore, the cost for this category would be zero in accordance with order Nos. 2021-569 and 202-296(A)." However, this conclusion is based on an incomplete reading of the Generic NEM Order. That Order approved the continued use of the value stack from Order No. 2015-194, and specifically

[9] ORS Witness Gretchen Pool admitted that, in the Generic NEM docket, ORS Witness Horii noted that even in the absence of granular data, using a non-zero estimate would be preferable over assigning a zero value for avoided T&D. Tr. at 314:24–315:12, 317:5-15.

found that the "existing cost-benefit categories for evaluation approved by Order No. 2021-5194 are appropriate for determining the value of customer generation." Order No. 2021-569 at 11. The NEM Methodology in Order No. 2015-194 defines the "fuel hedge" component broadly, specifically including "the increases/decreases in....the cost or benefit associated with serving a portion of its load with a resource that has less volatility due to fuel costs than certain fossil fuels." Order No. 2021-569, Ex. 1 at 2. Though the Generic NEM Order added that "if the electrical utility engaged in financial hedging activities, then [it] shall keep sufficient data to determine the prudency of those costs," Order No. 2021-569 at 41, it did not alter the definition to include only financial hedging activities. As a result, DESC and the Order justify the zero value for fuel hedge based on only a partial reading of the controlling standard, whereas Witness Beach's alternative value is the only value that fully accounts for Order No. 2015-194's methodological description.

Accordingly, CCL/SACE request that the Commission adopt Witness Beach's fuel hedge value. To the extent the Commission does not wish to adopt Witness Beach's recommended methodology of calculating fuel hedge, the Order need not reach the conclusion that the component only applies to financial hedging and thus alter the NEM methodology for purposes of future fuel proceedings.

CONCLUSION AND REQUEST FOR RELIEF

Accordingly, and for the reasons set out above, CCL/SACE respectfully petition the Commission for partial reconsideration of Order No. 2022-290 regarding the "value of solar," as calculated by DESC and approved by the Order. Specifically, CCL/SACE request that the Commission:

1) Issue a clarification to the Order reflecting that Witness Neely's testimony regarding the impact of the value of solar on the DER NEM incentive, as quoted on page 37 of the Order, is incorrect and was subsequently corrected on the record by DESC Witness Rooks;
2) Adopt the avoided capacity value calculated by Witness Beach with the methodology in Order No. 2021-569;
3) Adopt the line losses value proposed by Witness Beach in recognition of the fact that this is the only value that complies with the applicable standard in the Generic Order or, in the alternative, provide an explanation of the Commission's departure from the findings in the Generic NEM Order in approving an average line loss methodology;
4) Adopt Witness Beach's alternative T&D value for the Current Period, which was calculated according to best practice and in a manner that accounts for the full T&D benefits of DERs;
5) Adopt Witness Beach's alternative fuel hedge value as the only value that fully accounts for Order No. 2015-194's definition of fuel hedge, or, in the alternative, clarify that the Order was not intended to alter the fuel hedge component of the NEM Methodology in future fuel proceedings.

Respectfully submitted this 9th day of May, 2022,

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I hereby certify that the parties listed below have been served via first class U.S. Mail or electronic mail with a copy of a *Partial Petition for Reconsideration*, filed on behalf of the South Carolina Coastal Conservation League and Southern Alliance for Clean Energy.

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This 9th day of May, 2022.

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